

## Message Text

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PAGE 01 STATE 169382  
ORIGIN EB-08

INFO OCT-01 AF-10 ARA-10 EA-10 EUR-12 NEA-10 IO-13  
ISO-00 SIG-03 CAB-02 CIAE-00 COME-00 DODE-00  
DOTE-00 INR-10 NSAE-00 FAA-00 L-03 SS-15 NSC-05  
TRSE-00 /112 R

DRAFTED BY EB/OA/AVP:GGGRIFFITHS:JH  
APPROVED BY EB/OA:MHSTYLES  
EURPE:PLAASE  
L/EB:FWILLIS

-----027347 060732Z /21

R 051852Z JUL 78  
FM SECSTATE WASHDC  
TO AMEMBASSY LONDON  
AMEMBASSY BONN  
AMEMBASSY MANILA  
AMEMBASSY MEXICO  
AMEMBASSY THE HAGUE  
AMEMBASSY OSLO  
AMEMBASSY PARIS  
AMEMBASSY WELLINGTON  
AMEMBASSY TOKYO  
AMEMBASSY CANBERRA  
AMEMBASSY SEOUL  
AMEMBASSY COPENHAGEN  
AMEMBASSY STOCKHOLM  
AMEMBASSY OTTAWA

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E.O. 11652: N/A

TAGS: UK, GE, RP, MX, NL, NO, FR, NZ, JA, AS, KS, DA, SW, CA

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SUBJECT: CIVAIR:CALIFORNIA PROPERTY TAX ON FOREIGN  
AIRLINES

1. SUMMARY: WASHINGTON EMBASSIES OF ADDRESSEE POSTS'  
HOST GOVERNMENTS HAVE RECENTLY GIVEN DEPARTMENT DIPLOMATIC  
NOTES CONCERNING A PROPOSED AMENDMENT TO THE CALIFORNIA TAX  
REGULATIONS WHICH WOULD ENABLE THE STATE OF CALIFORNIA AND

THE LOCAL COUNTY ASSESSORS OF CALIFORNIA TO LEVY A PROPERTY TAX ON AIRCRAFT OWNED AND OPERATED BY FOREIGN AIRLINES IN FOREIGN COMMERCE TO AND FROM THE STATE OF CALIFORNIA. NOTES HAVE STATED BELIEF THAT SUCH LOCAL TAXATION WOULD VIOLATE MULTILATERAL AND BILATERAL COMMITMENTS THAT THE USG HAS MADE TO PROVIDE RECIPROCAL EXEMPTIONS FROM SUCH TAXATION. NOTES HAVE ALSO CITED POSSIBILITY THAT FOREIGN GOVERNMENTS WILL IMPOSE SIMILAR TAXES ON US AIRCRAFT IF CALIFORNIA TAX IMPOSED. CALIFORNIA PUBLIC HEARING ON TAX ORIGINALLY SET FOR JUNE 29 HAS BEEN POSTPONED UNTIL THE US SUPREME COURT HEARS ARGUMENTS IN RELATED CASE OVER WHETHER CALIFORNIA CITIES MAY IMPOSE PROPERTY TAXES ON FOREIGN SHIPPING CONTAINERS USED EXCLUSIVELY IN WORLD SHIPPING. DEPARTMENT PLANS MAKE REPRESENTATION TO CALIFORNIA AUTHORITIES AT APPROPRIATE TIME. END SUMMARY.

2. CALIFORNIA HAS ANNOUNCED ITS INTENTION TO AMEND ITS TAX RULES SO THAT FOREIGN REGISTERED AIRCRAFT OPERATING SOLELY IN FOREIGN COMMERCE INTO AND OUT OF THE STATE OF CALIFORNIA WOULD BE SUBJECT TO PROPERTY TAX ON AN APPORTIONED BASIS. FORMERLY, SUCH AIRCRAFT HAD BEEN SHIELDED FROM TAXATION BY WHAT IS REFERRED TO AS THE HOME-PORT DOCTRINE, I.E. THAT THE HOME STATE SHOULD LEVY SUCH TAXES. HOWEVER, IN TWO RECENT SHIPPING CASES, THE CALIFORNIA SUPREME COURT UPHELD LOCAL PROPERTY TAXES ON LIMITED OFFICIAL USE

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CONTAINERS USED EXCLUSIVELY IN WORLD SHIPPING. IN THE VIEW OF THE CALIFORNIA STATE BOARD OF EQUALIZATION, THE TAXING AUTHORITY, THESE SHIPPING CASES HAVE OVERTURNED THE HOME PORT DOCTRINE, AND THE WAY IS NOW CLEAR TO IMPOSE PROPERTY TAXES ON AIRCRAFT USED SOLELY IN FOREIGN COMMERCE. A PUBLIC HEARING ON THE AIRCRAFT TAX HAD BEEN SET FOR JUNE 29, BUT HAS BEEN POSTPONED PENDING US SUPREME COURT REVIEW OF ONE OF THE SHIPPING CASES. THE US SUPREME COURT AT THIS STAGE HAS SIMPLY DECIDED TO HEAR ARGUMENTS, ON THE SHIPPING CASE, BUT IT HAS MADE IT CLEAR IT STILL IS NOT SURE IT SHOULD TAKE JURISDICTION. IT IS EXPECTED THAT ARGUMENTS ON THE SHIPPING CASES WILL BE HEARD SOMETIME IN THE FALL.

3. THE PROPOSED AMENDMENT TO THE CALIFORNIA TAX RULES WOULD RESULT IN AN APPORTIONED PROPERTY TAX WHICH WOULD BE BASED PRIMARILY ON TWO THINGS: THE TYPE OF AIRCRAFT INVOLVED, AND THE LENGTH OF TIME IT IS ON THE GROUND IN CALIFORNIA. WHILE THE FORMULA FOR COMPUTING THE ACTUAL TAX APPARENTLY IS COMPLICATED, ATTORNEYS FOR JAPAN AIR LINES STATES THAT IT COULD RESULT IN A TAX BILL FOR JAL OF APPROXIMATELY US .5-1MN DOLLARS ANNUALLY AT LOS ANGELES.

4. IN ADDITION TO RECEIVING DIPLOMATIC NOTES, DEPARTMENT HAS BEEN CONTACTED BY DELEGATION OF LAWYERS REPRESENTING VARIOUS INTERNATIONAL AIRLINES. LAWYERS, AND THE DIPLOMATIC NOTES, HAVE CITED ARTICLE 24 OF THE CHICAGO CONVENTION WHICH STATES THAT QUOTE AIRCRAFT ON A FLIGHT, FROM, OR ACROSS TERRITORY OF ANOTHER CONTRACTING STATE ARE TO BE ADMITTED TEMPORARILY FREE OF DUTY. UNQUOTE. IN ADDITION, SECTION III OF THE ICAO COUNCIL RESOLUTION OF NOVEMBER 14, 1966 ON TAXATION OF INCOME OF INTERNATIONAL AIR TRANSPORT ENTERPRISES AND ON TAXATION OF AIRCRAFT HAS BEEN CITED. CLAUSE (1) (B) STATES QUOTE (1) EACH CONTRACTING STATE SHALL, TO THE FULLEST EXTENT POSSIBLE, GRANT RECIPROCAL (B) EXEMPTION FROM PROPERTY TAXES, AND LIMITED OFFICIAL USE

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CAPITAL LEVIES OR OTHER SIMILAR TAXES, ON AIRCRAFT OF OTHER CONTRACTING STATES ENGAGED IN INTERNATIONAL AIR TRANSPORT; ... UNQUOTE

NOTES WHICH HAVE OBVIOUSLY BEEN WELL COORDINATED, ALL POINT TO A USG STATEMENT TO ICAO RE THIS CLAUSE: QUOTE THE UNITED STATES IS IN ACCORD WITH THE PRINCIPLES SET FORTH IN THIS CLAUSE AND, IN ACCORDANCE WITH ITS EXISTING LAWS, HAS FOR A LONG PERIOD OF TIME FOLLOWED THE PRACTICE OF GRANTING THE EXEMPTIONS PROVIDED FOR IN THIS CLAUSE THROUGH BILATERAL AGREEMENTS WITH OTHER COUNTRIES, OR, IN APPROPRIATE CASES, BY MEANS OF ADMINISTRATIVE RULINGS. UNQUOTE. LASTLY, MOST NOTES ALSO REFER TO VARIOUS PROVISIONS OF RESPECTIVE BILATERAL WHICH PROVIDE FOR RECIPROCAL EXEMPTION TO FULLEST EXTENT POSSIBLE OF VARIOUS NATIONAL DUTIES AND TAXES AND STATE THAT THE IMPOSITION OF THE CALIFORNIA PROPERTY TAX WOULD VIOLATE SPIRIT, IF NOT THE LETTER OF SUCH BILATERAL PROVISIONS.

5. DEPARTMENT HAD PLANNED TO MAKE REPRESENTATION AT JUNE

29 MEETING, BUT WILL NOW AWAIT OUTCOME IN US SUPREME COURT OF CONTAINER CASE. DEPARTMENT HAS BEEN SUCCESSFUL IN PAST INSTANCES IN FENDING OFF SUCH LOCAL TAXES BY MAKING ARGUMENTS ON POLICH GROUNDS ALONE. LEGAL ISSUES ARE NOT CLEAR-CUT, PARA 4 FOREGOING NOTWITHSTANDING, AND DEPARTMENT HAS BEEN RELUCTANT PREVIOUSLY TO DO BATTLE ON LEGAL GROUNDS.

6. COMMENT: IMPLICATIONS OF SUCH A TAX BEING IMPOSED IN CALIFORNIA ARE, INTER ALIA: A PROLIFERATION OF SUCH TAXES ELSEWHERE IN THE US AND THE VIRTUAL CERTAINTY LIMITED OFFICIAL USE

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ORIGIN EB-08

INFO OCT-01 ISO-00 /009 R

66011

DRAFTED BY EB/OA/AVP:GGRIFITHS

APPROVED BY EB/AN:MHSTYLES

EB/OA/AVP:AJWHITE

-----103815 250849Z /21

R 250250Z AUG 78

FM SECSTATE WASHDC

TO AMEMBASSY BUENOS AIRES

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FOL RPT STATE 169382 SENT ACTIONN LONDON BONN  
MANILA MEXICO THE HAGUE OSLO PARIS WELLINGTON TOKYO  
CANBERRA SEOUL COPENHAGEN STOCKHOLM OTTAWA JUL 5, 1978

QUOTE: LIMITED OFFICIAL USE STATE 169382

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NOTE: ORIG DIST: EB/ISO,REBU,IO,AVIA,SS,NSC,TRSE.

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APPROVED BY:EB/OA/AVP:GGRIFFITHS  
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R 160315Z SEP 78  
FM SECSTATE WASHDC  
TO AMEMBASSY SINGAPORE

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RE SINGAPORE 4145

FOLLOWING REPEAT STATE 169382 ACTION BUENOS AIRES DATED AUG 25:

QTE:  
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FOL RPT STATE 169382 SENT ACTIONN LONDON BONN  
MANILA MEXICO THE HAGUE OSLO PARIS WELLINGTON TOKYO  
CANBERRA SEOUL COPENHAGEN STOCKHOLM OTTAWA JUL 5, 1978

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NOTE BY OC/T: ORIGINAL DIST.: EB/ISO,REBU,IO,AVIA,SS,NSC,TRSE.

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 jan 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** TAXES, SUPPLEMENTAL AIRLINES  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 05 jul 1978  
**Decaption Date:** 01 jan 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 20 Mar 2014  
**Disposition Event:**  
**Disposition History:** n/a  
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**Enclosure:** n/a  
**Executive Order:** N/A  
**Errors:** N/A  
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**Review Content Flags:**  
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**Review Markings:**  
Sheryl P. Walter  
Declassified/Released  
US Department of State  
EO Systematic Review  
20 Mar 2014  
**Markings:** Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014